



REPORT OF THE
ADVISORY COMMISSION
ON
RACE RELATIONS
TO
GOVERNOR LEROY COLLINS
MARCH 16, 1959

As members of the Governor's Advisory Commission on Race Relations, we submit this report to give you our thinking, conclusions and recommendations in regard to legislative action designed to meet the desegregation crisis.

We have discussed and studied this subject for the last two years. It is not at all difficult to state the problems of desegregation but it is very difficult to attempt to resolve those problems.

We have tried to avoid "wishful thinking," for the matter cannot be resolved by mere wishing, but must be faced realistically. We have also tried to approach the problems dispassionately, for the very reason that the problems are charged with emotion. And we have attempted to deal with the subject constructively, for too much is at stake to risk the destruction of institutions essential to the welfare and progress of our state.

Our basic duty is defined in the State Constitution. As electors, we have taken the oath prescribed by Section 3 of Article VI:

"Every elector shall at the time of his registration take and subscribe to the following oath: 'I do solemnly swear or affirm that I will protect and defend the Constitution of the United States and of the State of Florida, that I am twenty one years of age, and have been a resident of the State of Florida for

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twelve months and of this county for six months, and I am qualified to vote under the Constitution and laws of the State of Florida.'"

Similarly, the oath required of every state officer is set out in Section 2 of Article XVI:

"Each and every officer of this State, including the members of the Legislature, shall before entering upon the discharge of his official duties take the following oath of office: I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of _____ on which I am now about to enter. So help me God."

First, we would like to make one point clear, for it is the starting point.

Some misunderstanding apparently persists as to the effect of Section 12 of Article XII of our State Constitution which provides:

"White and colored children shall not be taught in the same school, but impartial provision shall be made for both."

The very basis of the desegregation problem is the ruling of the Supreme Court of the United States that laws which require or permit segregation according to race are invalid.

That the segregation provision of our State Constitution is null and void has been explicitly stated by our own Supreme Court. Back in 1955, in the Hawkins case, the Supreme Court of Florida pointed out:

"The theory of 'separate but equal' facilities under which this state has developed its educational system since Plessy v. Ferguson, supra, was decided in 1896, has been abolished by the decision of the Supreme Court in Brown v. Board of Education of Topeka, supra, 347 U.S. 483;

and we deem it to be our inescapable duty to abide by this decision of the United States Supreme Court interpreting the federal constitution. It therefore follows that the respondents may not lawfully refuse to admit the relator to the University of Florida Law School merely because he is a member of the negro race and 'separate but equal' facilities have been provided for him at a separate law school."

We do not yield to any person in our devotion to our State Constitution but we must acknowledge that the provision for segregation has been blotted out and rendered completely ineffective.

In our deliberations, we have looked both backward and forward -- backward so as to learn from experience and forward so as to try to profit from that learning. In this report, we do the same and hope it will be of some profit to you and our State.

The Little Rock, Arkansas, crisis of September, 1957, captured and held the nation's attention. All of us are familiar with the agonizing course of events and there is no need to detail it.

On September 15, 1958, Governor Faubus of Arkansas closed four Little Rock high schools.

The opinion of the United States Supreme Court in the Little Rock school decision was published September 29, 1958. We feel that the opinion, gratuitously and improperly, went beyond the case before the court, but as a legal precedent it spoke in unmistakable terms.

The court held that hostility and resistance to desegregation -- even to the point of violence -- was not a factor which could justify delay by a school board in making the transition to a desegregated school system. In this regard, the court said:

"The constitutional rights of respondents are not to be sacrificed or yielded to the violence and disorder which have followed upon the actions of the governor and Legislature."

* * *

"Thus law and order are not here to be preserved by depriving the Negro children of their constitutional rights."

The court also made it clear that any plan to maintain a segregated school system is void if the State, directly or indirectly, participates through any arrangement, management, funds or property. The court ruled:

"In short, the constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this court in the Brown case can neither be nullified openly and directly by state legislators or state executive or judicial officers, nor nullified indirectly by them through evasive scheme for segregation whether attempted 'ingeniously or ingenuously.'" (Smith v. Texas, 311 U.S. 128, 132.)

* * *

"State support of segregated schools through any arrangement, management, funds or property cannot be squared with the amendment's command that no state shall deny to any person within its jurisdiction the equal protection of the laws."

Later, on November 10, the Eighth Circuit Court of Appeals enjoined the Little Rock school officials from taking any further action to transfer the possession, control or operation of the Little Rock schools to any person or organization for the purpose of carrying on any segregated school operations of any nature.

On February 3 of this year, District Judge John E. Miller entered the last order to date in the case. Judge Miller ruled that if the schools are reopened, they will have to be "nonsegregated." He did not order the school officials to open the schools because they would subject themselves to the penalties of a state statute.

This statute and a number of other laws passed in the 1958 special session of the Arkansas Legislature are now under attack both in state and federal courts.

The first desegregation suit in Arkansas since the Little Rock crisis was filed this February 6. The suit seeks to desegregate a school district in a county which is about 40 miles southeast of Little Rock.

During this same period of time we intently followed the developments of the so-called "massive resistance" program of the State of Virginia.

Here again, the day-by-day occurrences were given national prominence and are all too familiar to all of us.

The program collapsed on January 19 of this year in state and federal courts.

Virginia's own Supreme Court struck down several laws because they violated the provision of the Virginia Constitution requiring the State to "...establish and maintain an efficient system of

public free schools throughout the state."

The Virginia Supreme Court specifically confined its decision to the State Constitution and did not consider whether these laws violated the federal constitution.

The stated purpose of the laws involved was to prevent any desegregation.

To that end, said the Virginia Supreme Court:

"...all elementary and secondary public schools in which both white and colored children are enrolled are, upon the happening of that event, automatically closed, removed from the public school system, and placed under the control of the Governor. All State appropriations for the support and maintenance of such schools are cut off and withheld from them. Such State funds so withheld, and certain other funds raised by local levies, are to be used for the payment of tuition grants for the education in nonsectarian private schools of children who have been attending such public schools, who cannot be assigned to other public schools, and whose parents or custodians desire that they do not attend schools in which both white and colored children are enrolled and taught. Schools which may be policed under federal authority, or disturbed by such policing, are upon the happening of that event, likewise automatically closed, and, under related statutes, tuition grants are made available for pupils who have been attending such schools."

The court ruled that money could not be withdrawn from any public school funds to pay tuition grants to pupils for use in attending a segregated school. To do so, said the Virginia court, would leave that public school without the support required by the Constitution. The court emphasized that the state must support the public free schools "throughout the state" and could not remove a desegregated school from the system and refuse to provide for its support and maintenance as a part of the school system.

The statute which provided for the closing of schools upon becoming desegregated and which vested the school authority in the Governor was held unconstitutional since the constitution vested the supervision of local schools in the local school boards.

For the same reason, the court voided the statute providing for the establishment and maintenance of a state school system to be administered by the Governor and under the supervision of the State Board of Education.

Too, the court struck down the act which directed that authorized local levies be paid into the state treasury to be expended by the State Board of Education in the localities. The court held this statute violated the constitutional provision requiring that local school taxes be expended by local school authorities.

Still another act provided for the automatic closing of schools because of any disturbance caused by the presence or policing of federal troops. The court said that while the State has the right under the police power to temporarily close a school, the law could not at the same time divest local officials of control and vest it in the Governor.

The court added that the State could, under its constitution, make tuition grants to pupils out of funds properly appropriated for the purpose.

The Attorney General of Virginia petitioned for a rehearing but the court has not as yet acted upon the petition.

On the same day, January 19, a special three-judge federal court at Norfolk declared invalid the laws under which six Norfolk schools had been closed because Negroes had enrolled.

In contrast to the Virginia Supreme Court, the federal court considered only the federal constitution and found it unnecessary to pass upon the State Constitution.

The rationale of the decision is shown in the following excerpts:

"Tested by these principles we arrive at the inescapable conclusion that the Commonwealth of Virginia having accepted and assumed the responsibility of maintaining and operating public schools, cannot act through one of its officers to close one or more public schools in the state solely by reason of the assignment to, or enrollment or presence in, that public school of children of different races or colors, and, at the same time, keep other public schools throughout the state open on a segregated basis. The 'equal protection' afforded to all persons and taxpayers is lacking in such a situation. While the State of Virginia, directly or indirectly, maintains and operates a school system with the use of public funds, or participates by arrangement or otherwise in the management of such a school system, no one public school or grade in Virginia may be closed to avoid the effect of the law of the land as interpreted by the Supreme Court, while the state permits other public schools or grades to

remain open at the expense of the taxpayers. In so holding we have considered only the Constitution of the United States, as it is unnecessary, in our opinion, to pass upon the specific provisions of the Constitution of Virginia which deal directly with the free public school system of the state. We do not suggest that, aside from the Constitution of Virginia, the state must maintain a public school system. That is a matter for state determination. We merely point out that the closing of a public school or grade therein, for the reasons heretofore assigned, violates the right of a citizen to equal protection of the laws and, as to any children willing to attend a school with a member or members of the opposite race, such a school-closing is a deprivation of due process of law. It follows, therefore, that the defendants must be permanently enjoined from enforcing or attempting to enforce the statutes in question as the same may apply to the public schools of the city of Norfolk."

* * *

"In the event the state of Virginia withdraws from the business of educating its children, and the local governing bodies assume this responsibility, the same principles with respect to equal protection of laws would be controlling as to that particular county or city. While the county or city, directly or indirectly, maintains and operates a school system with the use of public funds, or participates by arrangement or otherwise in the management of such school system, no one public school or grade in the county or city may be closed to avoid the effects of the law of the land while other public schools or grades remain open at the expense of the taxpayers. Such schemes or devices looking to the cutoff of funds for schools or grades affected by the mixing of races, or the closing or elimination of specific grades in such schools, are evasive tactics which have no standing under the law."

In short, the federal court held that Virginia cannot by state or local action close schools or grades in some communities and operate them in others. Similarly, the court ruled, neither can some schools in a community be closed while others in the same community are kept open.

The developments in Arkansas and Virginia do teach a lesson. If we are to heed that lesson, we cannot recommend legislative action which inevitably would result in similar consequences to the people of Florida.

North Carolina has a pupil enrollment act much the same as our pupil assignment law.

In 1956, the Fourth Circuit Court of Appeals held that the North Carolina law is not unconstitutional on its face and that it would not be assumed that it would be administered in an unconstitutional manner. The Supreme Court of the United States declined to

disturb this decision.

We think the following excerpts from the opinion of the Circuit Court of Appeals are significant:

"It is argued that the Pupil Enrollment Act is unconstitutional; but we cannot hold that that statute is unconstitutional upon its face and the question as to whether it has been unconstitutionally applied is not before us, as the administrative remedy which it provides has not been invoked...."

* * *

"Somebody must enroll the pupils in the schools. They cannot enroll themselves; and we can think of no one better qualified to undertake the task than the officials of the schools and the school boards having the schools in charge. It is to be presumed that these will obey the law, observe the standards prescribed by the legislature, and avoid the discrimination on account of race which the Constitution forbids. Not until they have been applied to and have failed to give relief should the courts be asked to interfere in school administration...."

* * *

"There is no question as to the right of these school children to be admitted to the schools of North Carolina without discrimination on the ground of race. They are admitted, however, as individuals, not as a class or group; and it is as individuals that their rights under the Constitution are asserted. *Henderson v. United States*, 339 U.S. 816, 824. It is the state school authorities who must pass in the first instance on their right to be admitted to any particular school and the Supreme Court of North Carolina has ruled that in the performance of this duty the school board must pass upon individual applications made individually to the board. The federal courts should not condone dilatory tactics or evasion on the part of state officials in according to citizens of the United States their rights under the Constitution, whether with respect to school attendance or any other matter; but it is for the state to prescribe the administrative procedure to be followed so long as this does not violate constitutional requirements, and we see no such violation in the procedure here required."

North Carolina is in the second year of voluntary, select desegregation. Under the administration of its pupil enrollment act, 13 Negro children are now attending formerly segregated schools in three cities.

In recent months, two desegregation suits have been commenced in North Carolina. One suit involves Mecklenburg County and the second, the City of Greensboro. Both cases are still in early stages.

North Carolina has not chosen to embark upon any massive resistance program. It does have a last resort measure and a parent option plan, but under its course, there has been no resort to either law.

Since the Brown case, many southern states have enacted school placement or assignment laws in various forms.

We have discussed the decision of the Fourth Circuit Court of Appeals sustaining the validity of the North Carolina law on its face.

The next year the same court, however, threw out the Virginia Pupil Placement Law. The court found the Virginia law patently unconstitutional because the effect ^{of it} ~~yet~~ was nullified by other laws which required a school to close when, under the administration of the placement law, a Negro pupil was enrolled.

The court said:

"As pointed out by the judge below, ... this statute furnishes no adequate remedy to plaintiffs because of the fixed and definite policy of the school authorities with respect to segregation and because of the provisions of chapter 68 of the Acts of the Extra Session, which provide for the closing of schools and withdrawal therefrom of state funds upon any departure from this policy in any school."

In the same year, 1957, the Fifth Circuit Court of Appeals struck down the Louisiana Pupil Assignment Law because the criteria for assignment of pupils plainly violated the principles set forth in the Brown case.

Last November 24, the Supreme Court of the United States held the Alabama School Placement Law was constitutional on its face. The Supreme Court did not render a written opinion, but affirmed the opinion of the special three-judge federal district court.

The federal court, in part, had this to say:

"The grounds upon which the Louisiana and Virginia Acts were declared unconstitutional on their face have been heretofore stated at some length. See ante pages 6,7 and 8. Enough has also been said to show that none of those grounds are applicable to the Alabama Act. The legal situation in Alabama is more analogous to that in North Carolina, where the Pupil Enrollment Act was ruled not to be unconstitutional on its face in an opinion by the late great Chief Judge Parker..."

"All that has been said in this present opinion must be limited to the constitutionality of the law upon its face. The School Placement Law furnishes the legal machinery for an orderly administration of the public schools in a constitutional manner by the admission of qualified pupils upon a basis of individual merit without regard to their race or color. We must presume that it will be so administered. If not, in some future proceeding it is possible that it may be declared unconstitutional in its application. The responsibility rests primarily upon the local school boards, but ultimately upon all of the people of the State."

These cases forcefully demonstrate that the benefits of an assignment law can be jeopardized -- and lost -- by enacting other statutes for the purpose of evading the effect of the desegregation cases.

Here in Florida, we have gained first-hand experience in our own litigation.

On June 18, 1958, the Hawkins case culminated in an order of Judge Dozier DeVane, Federal District Judge of Tallahassee.

Judge DeVane ruled:

"1. That the defendants be, and they are hereby enjoined from enforcing any policy, custom or usage of limiting admission to the graduate schools and graduate professional schools of the University of Florida to white persons only.

2. That the defendants be and they are hereby enjoined from refusing to consider the qualifications of plaintiff and other negroes similarly situated who may hereafter apply for admission to the several graduate schools and graduate professional schools of the University of Florida.

3. That all such applications for admission to the several graduate schools and graduate professional schools of the University of Florida shall be considered on the qualifications of the applicants without discrimination because of race or color."

Your statement regarding this action, in which we concur, was:

"Judge Dozier DeVane is a native Floridian, one of the most widely respected and revered members of the judiciary and a fine gentleman. His order should have been expected following the holding by the United States Supreme Court and the Florida Supreme Court in this case.

The United States Supreme Court as early as 1950 held racial discrimination at the graduate level of public universities to be unconstitutional.

That was four years before the Brown decision dealing with desegregation in the public schools.

In 1955, our own Florida Supreme Court ruled that there is no legal basis for racial segregation at the University of Florida Law School. The only question left pending then was when this principle should be implemented, and this has now been decided in federal court by Judge DeVane.

The Attorney General, as the attorney for the State Board of Control, which governs our institutions of higher learning, exhausted every legal means to prevent the admission of Virgil Hawkins based upon his lack of qualifications regardless of race. These efforts were successful and resulted in the Hawkins attorneys withdrawing him from their suit.

So, Judge DeVane's order does not direct Hawkins or any specific applicant to be admitted. And, of course, it has nothing to do with the operation of our public grade and high schools, or with our junior colleges.

As our founding fathers ordained it, this is a government of laws and not of men. Therefore, this decision means that henceforth an applicant, regardless of race, who meets the requirements for graduate work applied by university authorities will be admitted. I expect the Board of Control will recognize this as applying to both the University of Florida and Florida State University.

In this respect Florida now joins the great majority of southern states. For some time now, there has been desegregation at the graduate level in 11 of the 16 southern states -- Virginia, Louisiana, Texas, Delaware, Arkansas, Kentucky, Maryland, Oklahoma, West Virginia, North Carolina and Tennessee -- and there has been no serious incident resulting at these universities.

I can see no reason why Florida also cannot expect to obey the Court's order without difficulty. To suggest anything to the contrary is a reflection upon the good will, mature judgment and native pride of Florida citizens and the men and women who comprise the student bodies, the faculties and the alumni of our great universities."

Since then, in accordance with the order of Judge DeVane, two Negro students have been accepted and have enrolled in the graduate schools of the University of Florida. There has been no disturbance incident to their enrollment.

On the public grade school level, three law suits are now in progress... one arising from Miami, one from West Palm Beach and the third from Tampa.

The Holland case from Palm Beach County was first commenced in 1956. It has had a long legal history and presently a second appeal in the Fifth Circuit Court of Appeals is pending.

Federal District Judge E. Choate, Miami, entered the initial order in the Holland case on July 5, 1957.

The Negro plaintiff-child contended that he was entitled to attend a school outside of the school district in which he resided. He had been assigned to a school in his school district and the one nearest to his home.

Judge Choate found:

"There was no evidence that the plaintiff's application was denied because of his color, but to the contrary, the evidence indicated the denial (as was the cases of the others) was because he resided much closer to the other school and because he resided in another school (assignment) district."

The Judge concluded:

"The plaintiff has been assigned to attend the nearest accredited grade school and that school is not sub-standard from an educational standpoint and its deficiencies are physical, and generally those deficiencies are common to many of the older schools. The assignment of the plaintiff does not deny him any constitutional right, nor was he discriminated against by reason of that assignment or the School Board's refusal to permit him to transfer to another more distant school."

The plaintiff appealed from this order and on August 26, 1958, the Fifth Circuit Court of Appeals reversed and remanded the case.

The Court of Appeals accepted the finding that the plaintiff had not been denied admission because of his race, but then went, in our opinion, far beyond the record facts of the case and instructed the plaintiff as to how next to proceed.

The opinion is worth close attention, for it speaks directly to Florida. It reads:

"The plaintiff charged also that the Florida Pupil Assignment Law was being applied discriminatorily so as to maintain segregation. The infant plaintiff was entitled to be treated simply as another school child without regard to his race or color, and the fact that he was a Negro did not vest him with a right to attend a school located in a district in which he did not reside when that geographical rule was being applied to all children alike.

That the plaintiff was ineligible to attend the school to which he applied would not, however, excuse a failure to provide nonsegregated schools. It is not necessary to review piecemeal the district court's findings of fact and conclusions of law, for the record as a whole clearly reveals the basic fact that, by whatever means accomplished, a completely segregated public school system was and is being maintained and enforced. No doubt that fact is well known to all of the citizens of the County, and the courts simply cannot blot it out of their sight. In the light of compulsory

residential segregation of the races by city ordinance, it is wholly unrealistic to assume that the complete segregation existing in the public schools is either voluntary or the incidental result of valid rules not based on race.

A three-judge district court recently held that the Alabama School Placement Law is not unconstitutional on its face, but concluded that ruling was a clear note of warning:

'All that has been said in this present opinion must be limited to the constitutionality of the law upon its face. The School Placement law furnishes the legal machinery for an orderly administration of the public schools in a constitutional manner by the admission of qualified pupils upon a basis of individual merit without regard to their race or color. We must presume that it will be so administered. If not, in some future proceeding it is possible that it may be declared unconstitutional in its application. The responsibility rests primarily upon the local school boards, but ultimately upon all of the people of the State.'

Nothing said in that opinion conflicts in any way with this Court's earlier statement relative to the Florida Pupil Assignment Law:

'...Neither that nor any other law can justify a violation of the Constitution of the United States by the requirement of racial segregation in the public schools.'

Gibson v. Board of Public Instruction of Dade County, 5th Cir. 1957, 246 F.2d 913, 914.

So long as the appellant and other Negro children are segregated in the public schools solely on the basis of race, they and each of them (including the appellant) are being deprived of their rights under the Constitution as construed by the Supreme Court. There is no need, at this time, to consider separately the charges of 'gerrymandering,' or of unconstitutionality of the Florida Pupil Assignment Law either on its face or in its application. It is enough to observe that no means of any description can be legally employed to deprive the appellant of his rights under the Constitution."

The case came back to the district court in Miami and this February 11, Judge Choate denied the plaintiff's motion for summary relief. His order is self-explanatory:

"It seems clear that the Shuttlesworth decision (Alabama pupil placement case) can only be construed to mean that until the Pupil Assignment Law procedure has been followed, to a point where the evidence shows a use of that law to force segregation then the Courts should not interfere. Here there has been no showing, whatsoever, that the application of the Florida Pupil Assignment Law was improper, and it is freely admitted that its procedure has not been exhausted even through its early stages. In fact the Plaintiff has shown nothing more than that he has been presently denied his desire to attend the more distant white school."

An appeal from this order has been taken.

In the Gibson case, arising from Dade County, Judge J. Lieb of the federal district court in Miami, has squarely held that our pupil assignment law is constitutional on its face.

Like the Holland case, the Gibson suit goes back to 1956 and a second appeal to the Fifth Circuit Court of Appeals is now pending.

The last final order entered in the case was in December, 1958. It was in the accompanying opinion that Judge Lieb so explicitly surveyed our legal position under the pupil assignment law.

Because of its significance to the State, we quote rather liberally from the opinion:

"Article 12, Section 12, of the Constitution of the State of Florida is a part of the Constitution adopted in 1885 and provides as follows:

'White and colored children shall not be taught in the same schools, but impartial provision shall be made for both.'

Section 238.09, Florida Statutes, was adopted in its present form as a part of Chapter 19355, Laws of Florida 1939 and provides as follows:

'The schools for white children and the schools for Negro children shall be conducted separately. No individual, body of individuals, corporation, or association shall conduct within this State any school of any grade (public, private, or parochial) wherein white persons and Negroes are instructed or boarded in the same building or taught in the same classes or at the same time by the same teachers.'

Article 12, Section 12, of the Florida Constitution and Section 228.09, Florida Statutes Annotated, obviously violate the provisions of the Constitution of the United States under the decision of the Supreme Court in the Brown case. All parties concede this fact."

* * *

"As to the prayer of the Complaint that the Court order the Defendants to promptly present a plan of desegregation of the schools, the Court finds that the Florida Pupil Assignment Law enacted by the Legislature of Florida since the filing of this suit meets the requirements of such a plan and the demands of the Plaintiffs. That Act provides a comprehensive plan and directive for the enrollment and assignment of all pupils in the public schools by the Boards of Public Instruction of the several counties and for appeals from such decisions made by the Boards, all on an individual basis. No reference whatever is made in the Act to consideration of race or color of the pupils.

Plaintiffs made no challenge to the validity of the Pupil Assignment Law. It, therefore, enjoys a presumption of validity as a State Statute."

* * *

"...since the said Constitutional provision and the said Statute are now declared to be invalid and unenforceable, there remains only the Florida Pupil Assignment Law governing the actions of the Defendants in the matter of assignment of pupils to schools of the County. This being the unchallenged law of the State, it must be followed by the Plaintiffs and Defendants alike. If in the enforcement of the provisions of that Act, the Defendants or any of them should violate the provisions of the law or should require anyone to attend or not to attend the public schools of the County because of race, the parent or guardian of the child affected by such conduct may ask for a review of such decision by the State Board of Education and then appeal to the Courts. This procedure is available only on an individual basis and is not available by class action."

In his opinion, Judge Lieb relied heavily upon the Alabama case and said:

"It is noted that the provisions of the Alabama School Placement Law are similar in all material respects to those of the Florida Pupil Assignment Law, both of which were modeled after the North Carolina Pupil Placement Act."

In the light of all the cases dealing with pupil assignment laws, we feel that the action recently taken by the Dade County School Board is obviously meaningful.

Four Negro pupils applied for admission to the Orchard Villa Elementary School in Miami. These pupils applied for assignment to this school under the provisions of the Pupil Assignment Law. Administrative hearings and studies were conducted by the Board as required by the law. After thorough consideration of all relevant factors, set forth in the law, the Board concluded it could not lawfully deny the applications and following the provisions of the statute and the decisions of state and federal courts admitted the pupils to the school for the term beginning September, 1959.

We recognize the high sense of duty and responsibility that motivated the Board.

The day the Dade County Board announced its decision, Judge Fabisinski, our Chairman, made this statement:

"The Advisory Commission on Race Relations had closely observed the Orchard Villa School situation since its inception.

The Commission feels the Dade County School Board action is sound and wise.

There is no question that this strengthens our pupil assignment law.

This state law was designed to give us a constitutional safeguard against mass, indiscriminate desegregation of our public schools.

In the proper administration of the act, it was understood that sooner or later some Negro pupils applying for admission to white schools would meet the high standards set up by the act.

It was also clearly understood by the Legislature and all concerned that the law could have no validity unless school boards applied it in good faith, and members of the committee that drafted the law so stated publicly immediately after the passage of the act.

The favorable decisions of the federal courts on the pupil assignment law have been based solely on the assumption that it would be so administered.

The result of the Dade County School Board action not only should relieve tensions and pressures in that county but should also be of great benefit to all other counties and the state as a whole in dealing intelligently and effectively with the problems facing our school system."

We have reviewed what we feel to be the more important legal developments in school desegregation cases within the last two years. These developments, we submit, bear out the wisdom and usefulness of our present legislation and on the other hand, bear out the futility and risks of legislative schemes of evasion.

We do not presume to judge the conduct of any sister state, but there are certain happenings and conditions which call attention to themselves.

Little Rock bears the wounds of its strife. The federal bayonets, the disorder, the closed schools, the confusion and violence have left wounds and scars that will be evident for many years.

Perhaps of most immediate importance is the fact that the four Little Rock high schools which were closed on September 15 by the Governor of Arkansas remain closed today.

We have already mentioned that a number of desegregation laws passed in the 1958 special session of the Arkansas Legislature are now being contested in both state and federal courts.

The General Assembly convened again in January of this year. The Southern School News (Vol. 5, No. 9, March, 1959) reports:

"Desegregation is the basis for about 50 measures introduced so far in the 60 - day session of the 62d General Assembly of Arkansas. That makes it a major concern of the Legislature..."

Before the collapse of the massive resistance program, Virginia too closed some of its schools.

Since then, the schools re-opened and to date, eleven public schools are open on a desegregated basis. Fifty-one Negroes attend these schools. In one of the eleven schools, no white pupils returned when the school re-opened.

Soon after the fall of the program, of massive resistance, Governor Almond of Virginia addressed the special legislative session and recommended the assembly recess to await the report from a legislative study commission to be appointed.

On February 2, the General Assembly recessed until March 31. Three days later the Governor appointed a 40- member commission of legislators to draft a new program for their state.

The commission report has not as yet been released. We feel almost certain the report will recognize that there remains but one legal choice -- some desegregation or no public school system.

We have pointed out that under its course of selected, voluntary desegregation, North Carolina has admitted thirteen Negro pupils to previously all-white schools.

No schools have been closed in North Carolina.

Governor Luther Hodges of North Carolina delivered the biennial message to the 1959 General Assembly on February 5. In relation to the state's position, Governor Hodges said:

"North Carolina has moved with calmness to meet the great problems forced upon us by an interpretation of the federal Constitution with which most of our citizens profoundly disagree. In reposing trust and confidence, and authority, in the people themselves at the local level, I believe our state has dealt wisely with this issue. No one has suggested a better approach than the one of local control and local responsibility. If in the future it becomes evident that a better course of action for North Carolina should be devised, I shall take appropriate steps to bring the matter before the General Assembly."

We understand the Assembly has introduced no desegregation legislation to date.

As noted above, the desegregation crisis brought the first school closings in 1958. The inevitable disruptions which occurred continue to be felt in the communities affected. For example, in the Little Rock School District in Arkansas, figures released by the

school officials indicate that somewhere between 400 and 900 high school students did not transfer to another school and presumably are receiving no formal education.

We do not think it is at all necessary to dwell on the impact and ramifications of closed schools.

In 1956, a Special Committee was appointed by you and the Cabinet to study our laws and to recommend any change deemed proper in view of the school desegregation cases. It was this Committee which recommended the pupil assignment law.

Judge Fabisinski was also chairman of that group and in its report, filed July 16, 1956, the Committee stated its purposes and obligations. We quote:

"After careful consideration and deliberation this Committee has determined that its purposes and obligations are:

- First: To maintain the public school system of the State of Florida.
- Second: To endeavor to determine the best interests, from an educational standpoint, of all of the children of our State, to further such interests in every manner and to do all that is possible to achieve and maintain the highest possible intellectual, moral and cultural standards of our school system.
- Third: To eliminate or to mitigate as much as possible any hostile feeling which might arise between any class or group of our citizens.
- Fourth: To comply at all times and under all conditions with the provisions of the Constitution of the United States of America and the Constitution of the State of Florida.
- Fifth: To determine, as thoughtful and responsible citizens of the State of Florida and the United States, legislative measures to be considered by the Legislature of the State of Florida in keeping with the above-avowed purposes of this Committee; to recommend such action to the representatives of our State and its various subdivisions and to the people of the State as a whole; and to call upon all of the citizens of our State to keep these purposes in mind and to strive in their own conduct to effectuate these goals."

We adopt and adhere to these same purposes and obligations and in that spirit, present to you our findings and recommendations.

1. Regardless of personal views about the desegregation decisions of the Supreme Court of the United States, we are confronted with the ultimate, constitutional fact that this court is the highest court of the land and that its decisions are a part of the law of the land.

No person or state can ignore or disregard with impunity the pronouncement of the Supreme Court of the United States.

2. Under the decisions of state and federal courts, there is no legislation which can accomplish -- what is so apparently the hope and desire of many -- the maintenance of complete segregation of race in a free public school system.

3. The Legislature could propose an amendment to our State Constitution which would permit the abolition of the system of free public schools.

So far as we can now determine, aside from the present State Constitution, the State need not maintain a public school system.

But we have also concluded that the State cannot constitutionally maintain a system of open and closed schools. All of our schools must be kept open or all must be closed down.

As already stated, we have concluded that one of our purposes and obligations is to maintain the public school system.

We might add that we cannot believe that a plan which in effect destroys our system of public schools would obtain even limited public acceptance.

We do not recommend an amendment to our State Constitution. Rather, we recommend that we adhere to Section 1 of Article XII, which provides:

"The Legislature shall provide for a uniform system of public free schools, and shall provide for the liberal maintenance of the same."

4. In our opinion, the net result of the pupil assignment law cases is that this law provides us with a comprehensive plan for the orderly administration of our public schools in a constitutional manner if properly applied.

We believe the experience of our State and other states demonstrates that the assignment law offers the best, the most reliable and the only lawful means yet produced to minimize the impact of the desegregation decisions. We find no basis in experience to fear that desegregation on a large scale is imminent.

It is our conclusion that we are faced with the ultimate choice of maintaining our public school system operated under the terms of the pupil assignment law or abandoning the public school system.

We recommend that the pupil assignment law be maintained in its present form.

5. We have discussed numerous proposals advanced from time to time as a means to preserve segregation in schools.

It should be kept in mind that the enactment of any legislation designed and directed to evade the desegregation decisions may jeopardize the validity of the pupil assignment law and deprive us of its benefits.

At your request, we will gladly examine any particular proposal and give you our opinion and recommendation.

Respectfully submitted,

s/Judge L. L. Fabisinski

s/Doak S. Campbell

s/J. R. E. Lee, Jr.

s/M. L. Mershon